

**Department of Health & Human Services
Health Care Financing Administration
Operational Policy Letter #103
OPL99.103**

Date: **October 6, 1999**

Subject: **The Five-Year Contracting Prohibition under the Medicare+Choice
(M+C) Program**

Effective Date: **For Contract Periods Beginning on or after January 1, 1999**

Question: How will HCFA apply the five-year contracting prohibition mandated by section 1857(c)(4) of the Balanced Budget Act of 1997 (BBA)?

Introduction: In this operational policy letter we discuss the application of this BBA provision through implementing regulations at 42 CFR section 422.506(a)(4). These regulations require the Health Care Financing Administration (HCFA) to impose a five-year contracting prohibition when a Medicare+Choice organization (M+CO) makes a decision to nonrenew its annual M+C contract unless HCFA finds that there are “special circumstances” that would warrant an exemption to the five-year contracting prohibition.

General Rule: An M+CO will be subject to the five-year contracting prohibition when the organization does not renew its annual Medicare contract and the M+CO severs its contracting relationship with HCFA. As long as an M+CO offers at least one M+C plan, the prohibition will not apply.

Special Circumstance Exemptions: If an M+CO which has nonrenewed its M+C contract proposes to return to Medicare contracting within the five-year time period, the organization must provide a written request to HCFA asking for an exemption to the prohibition based on special circumstances. HCFA will evaluate proposed special circumstance requests on a case-by-case basis. However, there are certain special circumstances under which HCFA will generally grant an exemption to the five-year contracting prohibition. These special circumstances are:

The organization is proposing to introduce an M+C plan(s) in a geographic area(s) currently served by two or fewer M+C plans.

The organization is proposing to introduce M+C plans in counties other than the counties they had previously withdrawn from when they ended their earlier contract with the Medicare program.

The organization proposes to offer a different M+C plan type than they had previously offered. For example, an organization that had offered a health maintenance organization may want to reenter the program and offer a preferred provider organization.

The organization has undergone a significant change such as a merger or acquisition and could thereby demonstrate that the new entity is essentially a different organization from the one that severed its contracting relationship with HCFA. HCFA reserves the right to make a determination whether the nature and extent of the organizational change is sufficient to consider the organization as a new entity and therefore no longer subjected to the five-year contracting prohibition.

Contact: HCFA Regional Office Managed Care Contacts.

This OPL was prepared by the Center for Health Plans and Providers.